

Bobby R. Milligan

Page 1

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

IN RE: DIGITEK PRODUCT LIABILITY LITIGATION

BOBBY R. MILLIGAN, et al.,)

Plaintiffs,)

vs.) MDL Case No. 2:09-cv-121

ACTAVIS GROUP HF, et al.,)

Defendants.)

DEPOSITION OF BOBBY R. MILLIGAN
TAKEN ON BEHALF OF THE DEFENDANTS
JULY 16, 2009

Bobby R. Milligan

Page 2

1

2

I N D E X PAGE

3

PAGE

4 QUESTIONS BY:

5

Ms. Criswell

6

6

Ms. West

223

7

Ms. Criswell

231

8

Mr. Kruse

234

9

Ms. Criswell

240

10

11

E X H I B I T S

12

13

EXHIBIT

PAGE

14

Deposition Exhibit 1

20

15

Deposition Exhibit 2

20

16

Deposition Exhibit 3

20

17

Deposition Exhibit 4

20

18

Deposition Exhibit 5

34

19

Deposition Exhibit 6

34

20

Deposition Exhibit 6A

34

21

Deposition Exhibit 7

34

22

Deposition Exhibit 8

51

23

Deposition Exhibit 9

58

24

25

Bobby R. Milligan

Page 3

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

IN RE: DIGITEK PRODUCT LIABILITY LITIGATION

BOBBY R. MILLIGAN, et al.,)
Plaintiffs,)
vs.) MDL Case No. 2:09-cv-121
ACTAVIS GROUP HF, et al.,)
Defendants.)

Deposition of BOBBY R. MILLIGAN, produced,
sworn and examined on the 16th Day of July,
2009 between the hours of 9:00 a.m. and 5:30
p.m. at the offices of Onder, Shelton, O'Leary
& Peterson, in the County of St. Louis, State
of Missouri, before Rebecca Brewer, Registered
Professional Reporter, Certified Realtime
Reporter, Missouri Certified Shorthand
Reporter, and Notary Public within and for the
State of Missouri.

Bobby R. Milligan

Page 4

A P P E A R A N C E S

FOR THE PLAINTIFFS:

Mr. Michael S. Kruse

Onder, Shelton, O'Leary & Peterson

110 East Lockwood

St. Louis, Missouri, 63119

314-963-9000

Mr. Fred Thompson, III (via telephone)

Motley Rice

28 Bridgeside Blvd.

Mount Pleasant, South Carolina, 29464

843-216-9000

Ms. Deborah B. McIlhenny (via telephone)

Hutton & Hutton

8100 East 22nd Street North, Bldg. 1200

Wichita, Kansas, 67226

FOR THE DEFENDANTS:

Ms. Leslie E. Criswell

Tucker, Ellis & West

515 South Flower Street, 42nd Floor

Los Angeles, California, 90071

213-430-3381

Bobby R. Milligan

Page 5

1

2

Ms. Sarah E. West

3

Shook, Hardy & Bacon

4

2555 Grand Blvd.

5

Kansas City, Missouri, 64108

6

816-474-6550

7

8

Mr. James S. Arnold

9

Allen Guthrie & Thomas, PLLC

10

500 Lee Street East, Suite 800

11

Charleston, West Virginia, 25301

12

304-720-4225

13

14

15

16

17

18

19

20

21

22

23

24

25

Bobby R. Milligan

Page 6

1 IT IS HEREBY STIPULATED AND AGREED by and
2 between counsel for Plaintiff and counsel
3 for the Defendant that this deposition may
4 be taken in shorthand by Rebecca Brewer,
5 RPR, CRR, CSR, Certified Court Reporter,
6 and Notary Public, and afterwards
7 transcribed into typewriting; and the
8 signature of the witness is not waived.

9 * * * * *

10 BOBBY R. MILLIGAN,

11 Of lawful age, produced, sworn and
12 examined on behalf of the DEFENDANTS, deposes
13 and says:

14 (Starting time of the deposition: 9:13 a.m.)

15 EXAMINATION

16 QUESTIONS BY MS. CRISWELL:

17 Q Mr. Milligan, good morning. My name's
18 Leslie Criswell. I represent the Actavis
19 defendants in this case. Ms. West, to my left,
20 represents the Mylan defendants.

21 MS. WEST: Good morning.

22 Q (By Ms. Criswell) And Mr. Arnold, to her
23 left, represents the defendants in the state class
24 action that has been filed Jarrell, J-A-R-R-E-L-L.
25 So that's who we all three are and we're here to

Bobby R. Milligan

Page 39

1 this Exhibit 3, which was the plaintiff fact sheet
2 that you signed in mid May of this year, question
3 No. 3 asks if you claim that you suffered bodily
4 injuries as a result of taking Digitek and you've
5 checked the box no, is that or is that not correct?

6 A I guess when I made that statement I guess I
7 wasn't sure that I had, you know, any bodily --
8 because I hadn't been to the doctor to question him
9 about, you know, when I was having trouble with my
10 vision.

11 Q Okay. When did you first come to the
12 conclusion that blurred vision was related in some
13 way to taking Digitek?

14 A I guess after they notified me that I was
15 taking the wrong medicine and asked me to, you
16 know, send it back to them and they sent me a
17 different replacement with okay by my doctor.

18 Q And when did that happen?

19 A Well, that was -- you mean, when -- I guess
20 it was in May when they notified me. I had trouble
21 for a month or two before that, like I said, with
22 blurred vision, just all at once I'd get a headache
23 and I get like a blur.

24 Q Okay. So let me understand. I believe your
25 patient -- or plaintiff fact sheet indicated you

Bobby R. Milligan

Page 40

1 returned -- well, strike that. I believe your fact
2 sheet indicated you stopped taking Digitek in May
3 of 2008, is that correct?

4 A Yes.

5 Q Okay. At what point in time with respect to
6 May of 2008 was it that you had first noticed any
7 blurred vision?

8 A Probably early in the year.

9 Q Early in the year of 2008?

10 A Yes.

11 Q And how early in the year are we talking
12 about?

13 A January, February.

14 Q Okay. Are you recalling something that
15 leads you to that conclusion, that that's when it
16 was? I mean, do you remember a doctor visit or an
17 event that happened or something?

18 A No. An event, yeah, there were two or three
19 events that I was driving and had to pull over and
20 let my wife drive because I was unable to drive.

21 Q Okay. And it was blurred vision and also
22 headache?

23 A Yes.

24 Q Anything else? Any other physical symptoms
25 that you experienced?

Bobby R. Milligan

Page 45

1 blurred vision?

2 A Not really. I've had a couple of small, you
3 know, things but not -- nothing compared to what I
4 had then.

5 Q So describe to me the blurred vision that
6 you had back in January, February or so of 2008
7 when you -- you had to pull over and have your wife
8 start driving the car, tell me what that was like.

9 A Well, just like we were seeing a bunch of
10 stars in front of you and if I seen car lights, I
11 seen eight or ten lights of the same car.

12 Q Okay. Did you only notice it at nighttime
13 or was it daytime, too?

14 A Both. I had it both, day and night.

15 Q Okay. Any other -- anything else that you
16 noticed with regard to blurred vision other than
17 multiple images of, for example, car lights?

18 A Other than I was having problems in the
19 regular just seeing, you know, real well. My eyes
20 were just getting weaker.

21 Q My eyes are getting worse, too. I don't
22 like it, but -- so you got new glasses and when did
23 you get new glasses?

24 A Sometime in the middle of 2008.

25 Q Okay. Was it after you returned the Digitek

Bobby R. Milligan

Page 46

1 tablets?

2 A Yes.

3 Q Was it yes?

4 A Yes.

5 Q Okay. And who's your doctor for your eyes?

6 A His name is Diggs, D-I-G-G-S, I believe it
7 is.

8 Q D like dog?

9 A D-I-G-G-S.

10 Q D like dog?

11 A Yes.

12 Q And Dr. Diggs is a man or woman? A man or a
13 woman?

14 A A man.

15 Q And what's his first name, do you know?

16 A I'm not sure.

17 Q Okay. And do you know where his office is?

18 A He's in J.C. Penney's Mid River Mall.

19 Q Which mall?

20 A Mid River.

21 Q Mid River. Okay. And has he been your eye
22 doctor for a while?

23 A No.

24 Q Is he still your eye doctor?

25 A Yes, I've been back to him since then,

Bobby R. Milligan

Page 47

1 problem with my glasses.

2 Q Okay. Before you went and had new glasses
3 made in about the middle of '08, how long had it
4 been since you'd had your eyes checked and, you
5 know, for correct prescription and all of that?

6 A Probably a year and a half to two years.

7 Q Okay. And during that year and a half to
8 two years, had you noticed that your vision was
9 slightly worse?

10 A Not really.

11 Q Okay. So the only reason you went back to
12 see him, then, in the middle of '08 was these
13 episodes of blurred vision?

14 A Well, at this time, when I went, I was
15 having trouble with my right eye, the vision in my
16 right eye. I wasn't focusing real good on it and I
17 get glasses regularly, you know, without insurance.
18 I don't have any insurance for them.

19 Q Okay. But every couple of years or so you
20 go and get your eyes checked?

21 A Yes, ma'am.

22 Q Is it more frequently that you typically --
23 or is two years about --

24 A Two years is probably --

25 Q So you had these episodes when you were

Bobby R. Milligan

Page 65

1 previous testimony. Subject to that objection, you
2 can answer the question.

3 A Not to my knowledge.

4 Q (By Ms. Criswell) Okay. Are you making
5 any claim in this case that you have lost either
6 lost earnings or lost the ability to earn some money
7 in some capacity because of taking Digitek?

8 MR. KRUSE: Object to the form of the
9 question to the extent it calls for a legal
10 conclusion, you can answer.

11 A Not to my knowledge, I haven't, no.

12 Q (By Ms. Criswell) Okay. How about
13 emotional distress or mental injury? Are you
14 claiming anything like that in connection with
15 taking Digitek?

16 MR. KRUSE: Same objection.

17 A I have, I guess, emotional from it. Again,
18 I'm not sure but I did have problems which I didn't
19 have before, but that's the only way I can answer,
20 I guess.

21 Q (By Ms. Criswell) Tell me about that.
22 What kind of emotional symptoms are we talking
23 about?

24 A I guess nerves, just nerves.

25 Q Okay.

Bobby R. Milligan

Page 66

1 A Things that I was unable to do that I had
2 been able.

3 Q Okay. All right. Let's talk about nerves.
4 When you say nerves, can you give me just a little
5 more detail about what you're talking about here?

6 A Maybe short tempered and just nervous. I
7 was nervous, my nerves.

8 Q Okay. Are you still having those symptoms?

9 A Some of it. I guess, really, the biggest
10 problem I have -- and I'm not sure it's connected
11 with it, but when I'm standing and if I close my
12 eyes, I weave all over the place and just my body
13 won't be still.

14 Q Okay. And have you seen a doctor for that?

15 A Not yet.

16 Q Have you told any medical practitioner at
17 all about that?

18 A No.

19 Q When did you first notice that?

20 A Earlier this year.

21 Q Okay. Did you notice it in connection with
22 some particular activity or were you at a
23 particular place when this first happened or what?

24 A It's hard to say. I guess, of all things,
25 one of the most noticeable, and still yet, is I go

Bobby R. Milligan

Page 164

1 than earlier ones?

2 A Yes.

3 Q Okay. Did you have an earlier pill/tablet
4 still on hand when you got that prescription in
5 January of '08 that you put them next to each other
6 and said, Boy, yeah, that's thicker?

7 A No, I never -- I usually take my last one
8 before I open up the next bottle.

9 Q So you didn't sit them side by side to look
10 at them?

11 A No.

12 Q All right. So you returned the 45 that you
13 hadn't used. And they gave you 45 at no charge,
14 right?

15 A Yes.

16 Q And then now you're taking Digoxin instead
17 of Digitek?

18 A Yes.

19 Q And is the Digoxin you're taking now
20 also .25 milligrams?

21 A Yes.

22 Q And have you -- have you looked at those to
23 see if they look like they're thick, thin,
24 different shape, different color, anything like
25 that?

Bobby R. Milligan

Page 197

1 the CVS document other than maybe blurred vision
2 and maybe headaches?

3 A I'm not sure.

4 Q But you were concerned afterwards and you
5 went back and read that document, right?

6 A Yes.

7 Q Right? And did you talk with Dr. Byrnes,
8 then, about what that CVS side effects document
9 said and whether you had been injured in any way as
10 listed on the side effect sheet?

11 A I just talked to him about what I had read
12 on that, what the possibilities was and about what
13 he told me is that's what the -- matches what it
14 says on the nausea, diarrhea, the whatever.

15 Q There's lots of other things listed?

16 A Yes.

17 Q So my question to you is: Did Dr. Byrnes
18 indicate that -- has he ever indicated that he
19 thought you personally suffered any side effects at
20 all from Digitek?

21 A Not really any direct thing to tell me, no.

22 Q Okay. Has he ever indicated to you -- well,
23 all right. Have you had more than one conversation
24 like that with him, you know, Doctor, was I hurt by
25 this medicine? You must have talked with him more

Bobby R. Milligan

Page 252

1 STATE OF MISSOURI)

2)SS
3 CITY OF ST. LOUIS)

4 I, Rebecca Brewer, Registered Professional
5 Reporter, Certified Real-time Reporter, and
6 Notary Public in and for the State of Missouri

7 do hereby certify that the witness whose

8 testimony appears in the foregoing deposition
9 was duly sworn by me; that the testimony of the
10 said witness was taken by me to the best of my

11 ability and thereafter reduced to typewriting

12 under my direction; that I am neither counsel

13 for, related to, nor employed by any of the

14 parties to the action in which this deposition

15 was taken, and further that I am not relative

16 or employee of any attorney or counsel employed

17 by the parties thereto, nor financially or

18 otherwise interested in the outcome of the

19 action.

20
21 _____ RPR, MO-CCR,
22 Notary Public within and for the State of Missouri

23
24
25 My Commission expires April 7, 2013.

Bobby R. Milligan

Page 253

1 Midwest Litigation Services
2 711 North Eleven Street
3 St. Louis, Missouri, 63101
4 Phone (314) 644-2191 Fax (314) 644-1334
5

6 July 16, 2009
7 Mr. Michael S. Kruse
8 Onder, Shelton, O'Leary & Peterson
9 110 East Lockwood
10 St. Louis, Missouri, 63119
11 314-963-9000

12 In Re: IN RE: DIGITEK PRODUCT LIABILITY LITIGATION
13 vs. ACTAVIS GROUP HF, ET AL.

14 Dear Mr. Kruse:

15 Please find enclosed your copy of the deposition of
16 BOBBY R. MILLIGAN taken on July 16, 2009 in the above
17 referenced case. Also, enclosed is the original
18 signature page and errata sheets.

19 Please have the witness read your copy of the
20 transcript, indicate any changes and/or corrections
21 desired on the errata sheets, and sign the signature
22 page before a notary public.

23 Please return the errata sheets and notarized signature
24 page to Ms. Leslie Criswell for filing prior to trial
25 date.

Thank you for your attention to this matter.

Sincerely,

Rebecca Brewer, RPR, CCR (MO), CRR

cc: Ms. Leslie Criswell

Bobby R. Milligan

Page 254

1 State of)

2 County of)

3 I, BOBBY R. MILLIGAN, do hereby certify:

4 That I have read the foregoing deposition;

5 That I have made such changes in form

6 and/or substance to the within deposition

7 as might be necessary to render the same

8 true and correct;

9 That having made such changes thereon, I

10 hereby subscribe my name to the

11 deposition.

12 I declare under penalty of perjury that

13 the foregoing is true and correct.

14

15 BOBBY R. MILLIGAN

16 Executed this_____day of_____

17 2009, at_____.

18

19 Notary public:

20 My Commission Expires:

21

22 Signature page to: BOBBY R. MILLIGAN

23 MILLIGAN, ET AL. VS. ACTAVIS GROUP HF, ET AL.

24

25

Bobby R. Milligan

Page 255

WITNESS ERRATA SHEET

Witness Name: BOBBY R. MILLIGAN

Case Name: MILLIGAN, ET AL. VS. ACTAVIS GROUP HF,
ET AL.

Date Taken: JULY 16, 2009

Page #____ Line#____

Should Read: _____

Reason for Change: _____

Page #____ Line#____

Should Read: _____

Reason for Change: _____

Page #____ Line#____

Should Read: _____

Reason for Change: _____

Page #____ Line#____

Should Read: _____

Reason for Change: _____

Witness Signature: _____